

Vermont Department of Fish & Wildlife

Attn: Chris Saunders

RE: Jurisdictional Opinion #7-258

Proposed Shooting Range, VT105, Ferdinand

Chris,

Thank you for inquiring about Act 250 permit requirements for the above-referenced project, via phone call yesterday.

### Project Description

I understand from our conversation that:

- (i) The shooting range project is proposed to be located in an existing gravel pit located on the north side of VT105 in Ferdinand, with access via an existing driveway located immediately east of an existing utility yard;
- (ii) The existing gravel pit is not believed to have disturbed in excess of total 10 acres over its operating life.
- (iii) The shooting range project will disturb less than 10 acres of land and may include a small parking lot;
- (iv) The shooting range project will be used intermittently and seasonally, for public purposes, eg in connection with hunter safety education;
- (v) The shooting range project will not be used for commercial purposes, nor leased to a private operator;

### Jurisdictional Analysis

As discussed, the question of Act 250 jurisdiction hinges in part on the status of potential existing Act 250 permit jurisdiction over the project land area. The scope of the tract under existing Act 250 jurisdiction (via the existing Act 250 permits), ie the *Involved Land*, needs evaluation. Under Natural Resources Board Rule 2C(5), *Involved Land* includes (2) *Those portions of any tract or tracts of land to be physically altered and upon which construction of improvements will occur for state, county or municipal purposes including land which is incidental to the use such as lawns, parking lots, driveways, leach field, and accessory buildings, bearing some relationship to the land which is actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that the project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction.*

I understand from our conversation that the shooting range project will generally involve improvements and activities located at or near an existing gravel pit located on the north side of VT105, in Ferdinand. The existing gravel pit is featured on the attached map and its currently disturbed area comprises approximately 1 to 2 acres, according to a GIS calculation based on the attached orthophoto mapping and performed yesterday as a courtesy for me by Louis Bushey, ANR FP&R.

I have reviewed the existing Act 250 permit files and database and find that several Act 250 permits have previously issued for miscellaneous uses on the former St. Regis Paper Company lands in Ferdinand, however none of these Act 250 permits specifically identifies a gravel pit as the permitted use. I note that all of the St. Regis Paper Company Ferdinand permits that I located in our files / database are for logging above 2500 feet, with one exception, being permit #7E0158 and amendment. Permit #7E0158 is for uses located on the south side of VT105. I further note that you have indicated that you are not aware of any existing Act 250 permits for the gravel pit area of the property. I am not aware of any evidence of gravel pit use for logging above 2500 feet. Based on the foregoing, I conclude that the gravel pit project area is not *land to be physically altered* as a component of an existing Act 250 permits, ie is not *involved land* under the existing Act 250 permits, ie is not part of the permitted *development*. Accordingly, I conclude that a *material change* analysis does not apply to the shooting range project. Further, since the *state or municipal purpose* gravel pit project does not involve 10 acre of land, it is neither regulated *development*, nor permitted pre-existing development, and a *substantial change* analysis does not apply to the shooting range project.

The shooting range project generally located in the gravel pit will be evaluated as a stand-alone new project to determine if it is a regulated *development*.

I understand that the shooting range project is a *state or municipal purpose* project with less than 10 acres of physical land disturbance. Such a *state purpose* project having less than 10 acres of *involved land* is not a *development* and therefore does not require an Act 250 permit pursuant to §6001(3)(A)(v). I note that the shooting range may not be used for a *commercial purpose*; in the event that the shooting range is used for a *commercial purpose*, it would be regulated *development* pursuant to §6001(3)(A)(ii), and an Act 250 permit would be needed prior to construction of improvements. For reference, please see below related definitions:

NRB Rules Definition 2 (C) (4) provides that “*Commercial purpose*” means the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object or service having value.

NRB Rules Definition 2 (C) (15) provides “*State, county or municipal purposes*” means the construction of improvements which are undertaken by or for the state, county or municipality and which are to be used by the state, county, municipality, or members of the general public.

Combined State - Commercial Purpose Project: In the unplanned event that the project is a state purpose project with a commercial element (eg contracted operator also involved in commercial operation), then the commercial purpose component would create jurisdiction over the entire project. For reference, Declaratory Ruling #127, Rutland State Airport, which dealt with public-private and lease elements, may be of interest in this context. DR#127 can be found on our website per below:

<http://www.nrb.state.vt.us/lup/decisions/1981/dr127.pdf>

### Conclusion

An Act 250 permit is not required for the proposed shooting range in Ferdinand, providing the shooting range is a *state purpose* project and is not used for a *commercial purpose*, as further outlined above.

I note that this is the only copy of this jurisdictional opinion that you will receive. On request, we will also issue a paper hard copy. Also, this is an advisory opinion. Interested persons who do not receive notice are not bound by this jurisdictional opinion. In order to insure that potential interested persons receive notice of this advisory opinion, you may wish to distribute this advisory opinion to adjoining property owners and anyone else you know about who may qualify as a Party pursuant to 10 V.S.A. Section 6085(c)(1)(A).

Thank you again for inquiring about permit requirements under Act 250. As discussed, you may wish to consult with EAD Permit Specialist John Miller regarding other potential non-Act 250 state permit / license requirements for the project.

Please feel free to call if you have any questions or require additional information.

Sincerely,

Kirsten

c: District Commission

Ferdinand town file

*This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Natural Resources Board Rule 3.*

*Reconsideration requests are governed by Natural Resources Board Rule 3 and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.*

*For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660).*

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Kirsten Sultan, P.E., Coordinator

District #7 Environmental Commission

1229 Portland Street Suite 201

St. Johnsbury, Vermont 05819

tel. (802) 751-0126

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**From:** Bushey, Louis

**Sent:** Thursday, March 06, 2008 3:22 PM

**To:** Sultan, Kirsten

**Subject:** wenlock wma

Louis Bushey

State Lands Forester

1229 Portland Street

St. Johnsbury, VT 05819